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SUBJECT: HIGHLIGHTS OF 1267 MONITORING TEAM'S ANNUAL REPORT

11. (U) SUMMARY: The 1267 Monitoring Team, a UN-mandated group charged with documenting and reporting on the implementation of the UN sanctions on Al-Qaeda and the Taliban, has issued its ninth annual report containing recommendations to improve the efficacy and fairness of this sanctions regime. The report lauds new procedures adopted in UNSCR 1822 to increase fairness and transparency that, along with improvements to the Consolidated List and increased commitment from Member States, is critical to ensuring these sanctions have the greatest impact on the Al-Qaeda and the Taliban. The Team presents a series of procedural recommendations to further enhance fairness in listing, reviewing names and de-listing names. It also proposes measures to ensure the "dynamism" of the Consolidated List (e.g., through de-listing individuals who lack sufficient identifiers or are reported to be dead) and improve implementation of the asset freeze, travel ban, and arms embargo. The Team proposes reforming the current system for granting humanitarian exemptions. END SUMMARY.

12. (SBU) On February 28, 2009, the Analytical Support and Sanctions Monitoring Team ("Monitoring Team") presented to the 1267 al-Qaeda/Taliban Sanctions Committee its ninth annual report containing recommendations to improve the efficacy and fairness of this sanctions regime. In the report, the Team concludes that the threat from al-Qaeda continues, with the focus firmly on South Asia, and that the Taliban (both in Afghanistan and Pakistan) is in no danger of defeat. The Team states that the al-Qaeda threat today is geographically restricted to the Afghanistan/Pakistan border area and the organization is weakened by its failure to mount the attacks that it has threatened. The report indicates by comparison that the Afghan Taliban has gained ground from opium cultivation and will likely continue to dominate the countryside for the foreseeable future, highlighting the urgent need for effective counter-terrorism measures in South Asia.

#### CHALLENGES TO SANCTIONS IMPLEMENTATION

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13. (SBU) The report assesses the major factors that have undermined the effective implementation of the 1267 UN sanctions regime, namely that some states lack the capacity to introduce and enforce the measures, regard the targets to be of marginal national relevance, grant sanctions a low priority because they believe them to be ineffective, or question the legitimacy of sanctions. The courts, in particular, the report observes, have asserted their authority to examine the legality of actions taken by States to carry out obligations under relevant Security Council sanctions resolutions.

14. (SBU) Referring to recent litigation in Europe challenging sanctions implementation, the Team notes that Courts have decided that individuals and entities placed on the List must have certain protections of their rights, in particular their right to know the case against them, to be heard and to challenge the decision before an independent body. These

court decisions, the report concludes, could cause real difficulties for Member State implementation of sanctions measures. Referring to new safeguards introduced in UNSCR 1822 (adopted June 2008), the Monitoring Team assesses that "the procedures now in place make future (legal) challenges less likely and less likely to be successful.<sup>8</sup>

#### IMPROVING FAIR PROCEDURES

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¶4. (SBU) To respond to criticisms of unfairness -- and stave off new litigation -- the report recommends improvements in three particular areas: listing, reviewing names and de-listing. With respect to listing procedures, the report recommends that the Committee should view any submission for listing as an invitation to its fifteen members to add, if they can, substantive further reasons for listing or identifying information, rather than just agree or disagree with the listing (as is current practice). The Monitoring Team believes that if the entries on the List are well founded and persuasive, they are less likely to be challenged in national courts.

¶5. (SBU) The report notes that the Security Council is unlikely to create an "independent review mechanism" to review designations (as some countries have proposed), but suggests instead that the recent litigation actually means that "(the courts) will in effect offer an independent review of listing decisions by the Committee when these are challenged before them." The Team also proposes that they should have the opportunity to gather relevant information from all parties concerned when designating states and states

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of residence disagree on the continued appropriateness of a listing or when the information provided is vague.

¶6. (SBU) To improve the delisting procedures, the Team recommends the Committee: 1) provide the petitioner a specific response when it rejects a petition, 2) consider ways to gather the maximum information possible about the activities of individuals and entities that apply for de-listing, 3) direct the Team, or another expert body, to collect further information from states or clarify aspects of the petition with the individuals or entities that have submitted it. The Team further notes that delisting should not be a precondition for a listed Taliban to participate in reconciliation talks, but that the Committee should develop specific requirements for delisting Taliban that would make the process more predictable and consistent.

#### MAKING THE CONSOLIDATED LIST: RELEVANT, DYNAMIC

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¶7. (SBU) Beyond the litigation and fairness critiques, the Team assesses that the greater challenge is "maintaining the preventative and forward-looking nature of the sanctions regime." To accomplish this, the Team believes the Committee must simultaneously continue those al-Qaeda/Taliban targets that pose the greatest current threat and remove listings that are peripheral to the current threat. The Team says that it believes there is "no obvious advantage in the List becoming longer, but (there is) great advantage in it becoming more dynamic.<sup>8</sup>

¶8. (SBU) To help clean up the list, the Monitoring Team notes the requirement in UNSCR 1822 that the 1267 Committee conduct a comprehensive review by June 30, 2010, to "ensure the Consolidated List is as updated and accurate as possible and to confirm that listing remains appropriate" by June 30, 2010. The Team recommends that the Committee regard this review as a priority, especially given the adverse effect that entries with insufficient identifiers have on the overall credibility of the List. In cases where a name lacks sufficient identifiers, the Team recommends that the Committee encourage the designating State either to provide

at a minimum the full name, date and place of birth and nationality, or to submit a de-listing request. The Team also recommends improvements in how the Consolidated List is distributed to states.

¶9. (SBU) The report recommends that when the Committee conducts its review of listed individuals reported to be dead (at least 24 individuals, possibly as many as 39), it should grant any pending de-listing request if nothing has been heard to contradict an official report of the death within twelve months. If no pending de-listing request exists, the Team recommends that the Committee chair submit a de-listing request for the individual concerned. In cases where the death has been widely reported but for which there is no official confirmation, the Team recommends that the Committee consult with the relevant States and encourage them to submit a de-listing request if two years have passed without further information.

#### RECOMMENDATIONS: ASSET FREEZE, TRAVEL BAN, ARMS EMBARGO

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¶10. (SBU) To enhance implementation of the asset freeze, the Team recommends that the Committee direct the Team, in conjunction with relevant States, the United Nations Assistance Mission in Afghanistan (UNAMA) and United Nations Office on Drugs and Crime (UNODC) to identify key figures that make payments to the Taliban and are vulnerable, by virtue of the visibility of their assets, to action under the sanctions measures. The report notes that evidence of terrorist financing, so far as it is available, suggests that Al-Qaeda and the Taliban rely on two main sources of income: donations and the proceeds of crime, including trafficking narcotics. It therefore concludes that the best targets of the assets freeze measure are the donors. The Team would like for States to follow the example of the United Arab Emirates, where hawala brokers must register with the Central Bank and submit all transactions for official scrutiny.

¶11. (SBU) The Team proposes the Committee grant it additional authority on a case-by-case basis to investigate details surrounding possible violations of the travel ban. The Team notes that violations of the travel ban may occur in reconciliation talks between the Afghan government and the Taliban. In such cases, the Team recommends that the Committee make clear to Afghanistan that such talks must respect the sanctions regime, but that the Afghan government may apply for exemptions to the travel ban.

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¶12. (U) With respect to the arms embargo on designated individuals and entities, the report notes that states find it difficult to prevent the indirect supply, sale, or transfer of arms and related material to individuals who are members of listed entities but are not listed. Several listed entities, the Team reports, have ceased to function or morphed into new, unlisted group. As an example, the Team notes the case of the Somali group Al-Shabaab which, although not currently listed, carries out armed operations on behalf of and in support of Al-Qaeda.

#### REFORM OF HUMANITARIAN EXEMPTIONS

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¶13. (SBU) The team notes that few States appear to abide by UNSCR 1452 (2002), which sets out the procedures for humanitarian exemptions from the asset freeze, and that the Committee should review this resolution. The Team proposes that a system whereby states are still obliged to seek agreement from the Committee before allowing an exemption for extraordinary expenses (as is current practice), but would have the discretion to grant exemptions for basic exemptions based on their own national standards and then informing the Committee of their decisions after the fact.

## NEXT STEPS

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¶14. (SBU) The 1267 Committee will have a first discussion about the Monitoring Team's report on March 9. The Committee, however, will return to these recommendations throughout the course of the year leading up to the renewal of the 1267 sanctions regime in December 2009.  
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